

Message Text

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ACTION L-02

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INFO AMEMBASSY BONN

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C O N F I D E N T I A L BERLIN 5099

E.O. 11652: GDS

TAGS: PGOV, PFOR, CGEN, CASC, GE, GW, AU

SUBJECT: GDR-AUSTRIAN CONSULAR AGREEMENT

REF: BONN 960

SUMMARY. THE GDR HAS SLAMMED THE FRG FOR INTERPOSING OBJECTIONS TO THE GDR/AUSTRIAN CONSULAR AGREEMENT WHICH WAS INITIALED IN VIENNA IN JULY, 1974. IN ATTACKING THE FRG AND FOREIGN MINISTER GENSCHER PERSONALLY, THE GDR TERMED THE WEST GERMAN POLICY AS BEING CONTRARY TO INTERNATIONAL LAW AND AS INTERFERING IN THE INTERNAL AFFAIRS OF OTHER STATES. THE AUSTRIANAMBASSADOR IN EAST BERLIN IS ATTEMPTING TO OBTAIN FURTHER CONCESSIONS ON TREATMENT OF DUAL NATIONALS AND PROGRESS ON HUMANITARIAN CASES. END SUMMARY.

1. BEGIN UNCLASSIFIED. NEUES DEUTSCHLAND (ND) ON JANUARY 21 CARRIED AN AUTHORITATIVE COMMENTARY ON THE FRG-AUSTRIAN DISPUTE (REFTEL) WHICH HAS BEEN AIRED EXTENSIVELY IN THE WEST GERMAN PRESS. (THE COMMENTARY WAS FIRST CARRIED BY THE EAST
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GERMAN NEWS AGENCY ADN ON JANUARY 17.) IN A VITUPERATIVE TONE

REMINISCENT OF THE HARSHTEST GDR ATTACKS ON THE FRG IN RECENT MEMORY, THE GDR EQUATED GENSCHER TO WILHELM II, STATING THAT THE FORMER HAS USURPED FOR HIMSELF THE RIGHT--BASED ON FRG ADHERENCE TO 1913 GERMAN REICH NATIONALITY LAW--TO DETERMINE WHO SHALL ENJOY "GERMAN" CITIZENSHIP. LABELING GENSCHER'S POLICY "ADVENTUROUS", THE ND COMMENTARY INQUIRED RHETORICALLY WHETHER THE PROJECTED FEBRUARY VISIT BY GENSCHER TO HIS AUSTRIAN COUNTERPART, BIELKA, WOULD BE UTILIZED TO CLAIM THAT AUSTRIANS POSSESSED GERMAN NATIONALITY. "AFTER ALL, THEY (THE AUSTRIANS) ALSO SPEAK GERMAN. THERE ARE ALL SORTS OF POSSIBILITIES AVAILABLE TO HERR GENSCHER IF HE CONSTANTLY MIXES UP SUCH VARIOUS MATTERS AS NATIONALITY, LANGUAGE AND CITIZENSHIP." ND ASSOCIATED ITSELF WITH THE REPORTED AUSTRIAN REACTION TO THE FRG COMPLAINT, NAMELY THAT "THE DIPLOMATIC RECOGNITION OF A STATE IS AT THE SAME TIME ALSO A RECOGNITION OF THE CITIZENSHIP OF THAT STATE'S INHABITANTS." THE GDR'S WELL-KNOWN POSITION ON A SEPARATE AND DISTINCT GDR CITIZENSHIP WAS REITERATED, AND THE FRG CONTENTION THAT THE BASIC TREATY (GRT) DOES NOT REGULATE THIS QUESTION WAS TERMED AN APOLOGIA FOR EXISTING DISCREPANCIES BETWEEN THE GRT AND FRG LAWS. SUCH FRG VIEWS, ND EMPHASIZED, DO NOTHING TO ALTER THE VALIDITY OF ARTICLES 2, 4 AND 6 OF THE GRT. CONCLUDING ITS POLEMIC, ND MAINTAINED THAT THIS INTERFERENCE BY BONN INTO MATTERS BEYOND ITS COMPETENCE WAS A RETURN TO THE TIMES OF THE "NOTORIOUS" HALLSTEIN DOCTRINE AND FORECAST THAT, JUST AS THE HALLSTEIN DOCTRINE COULD NOT KEEP THE GDR FROM OBTAINING UN MEMBERSHIP AND INTERNATIONAL RECOGNITION, THE GENSCHER POLICY WOULD NOT SUCCEED IN PERMITTING THE FRG TO REPRESENT ALL GERMANS. END UNCLASSIFIED.

2. IN THE JOINT COMMUNIQUE ISSUED WHEN ESTABLISHING RELATIONS WITH THE GDR IN DECEMBER, 1972, THE AUSTRIANS ACHIEVED INCLUSION OF A STATEMENT THAT THE TWO STATES WOULD NEGOTIATE A CONSULAR AGREEMENT AND WORK FOR THE ALLEVIATION OF CERTAIN HUMANITARIAN PROBLEMS. ACCORDING TO THE AUSTRIAN AMBASSADOR IN EAST BERLIN, THE CONSULAR AGREEMENT, WHICH WAS INITIALED IN JULY, 1974 AFTER NINE MONTHS OF DIFFICULT NEGOTIATIONS, HAS NOT BEEN SIGNED BECAUSE THE GOA HAS NOT YET MANAGED TO EXTRACT A FORMAL COMMITMENT FROM THE EAST GERMANS DEFINING THE RIGHTS OF THE GOA TO REPRESENT SOME 4,000 GDR/AUSTRIAN DUAL NATIONALS RESIDENT

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IN THE GDR. MOREOVER, THE GDR HAS NOT YET SATISFIED THE OTHER CONDITION AGREED ON IN DECEMBER, 1972, NAMELY, SUFFICIENT PROGRESS IN RESOLVING A NUMBER OF HUMANITARIAN CASES WHICH THE AUSTRIANS IN 1974 BROUGHT TO THE ATTENTION OF THE GDR.

3. THE OPERATIVE SECTION OF THE INITIALED AGREEMENT DEALING WITH CITIZENSHIP, TO WHICH THE FRG OBJECTS, IS THE SENTENCE: "STAATSBUERGER DES ENTSSENDESTAATES SIND DIE PERSONEN, DIE NACH DEN

RECHTSVORSCHRIFTEN DIESES STAATES DESSEN STAATSBUERGERSCHAFT HABEN." (CITIZENS OF THE SENDING STATE ARE THOSE PERSONS WHO HAVE ITS CITIZENSHIP PURSUANT TO THE LEGAL PROVISIONS OF THAT STATE.) THE IMMEDIATELY SUBSEQUENT SENTENCE IN THE AGREEMENT DEALS WITH THE RIGHTS OF THE SIGNATORIES TO REPRESENT DUAL NATIONALS. THE TEXT OF THIS SENTENCE IS: "FUER DAS VERTRETUNGSRECHT FUER EINE PERSON, DIE DIE STAATSBUERGERSCHAFT DES ENTSENDESTAATES UND DES EMPFANGSSTAATES BESITZT, GEGENUEBER DEN STAATSORGANAN BEHUORDEN BEHEERDEN GSSTAATES SOWIE FUER DIE HANDLUNGSPFLICHTEN DES EMPFANGSSTAATES NACH DIESEM VERTRAG IST DIE STAATSBUERGERSCHAFT IN ERSTER LINIE NACH DEM WOHNSTZ ZU BEURTEILEN" (THE RESIDENCE OF AN INDIVIDUAL WHO POSSESSES THE CITIZENSHIP OF THE SENDING STATE AND OF THE RECEIVING STATE WILL, IN THE FIRST SINSTANCE, DETERMINE THE RIGHT TO REPRESENT THAT INDIVIDUAL VIS-A-VIS THE STATE ORGANS/AUTHORITIES OF THE RECEIVING STATE AS WELL AS THE REPRESENTATION RESPONSIBILITIES OF THE RECEIVING STATE.)

4. IT IS IN CONNECTION WITH THE LATTER PROVISION THAT THE AUSTRIANS ARE SEEKING WRITEEN CONFIRMATION FROM THE EAST GERMANS THAT THE GOA WILL BE ABLE, IN SPECIFIED CIRCUMSTANCES, TO INTERVENE WITH GDR AUTHORITIES ON BEHALF OF THOSE GDR CITIZENS RESIDENT IN THE GDR WHO ALSO POSSESS AUSTRIAN CITIZENSHIP. THE AUSTRIANS HAVE BEEN WORKING WITH THE EAST GERMANS FOR SEVERAL MONTHS ON LANGUAGE WHICH WOULD SPELL OUT EXACTLY WHAT THE GOA MIGHT BE ABLE TO DO ON BEHALF OF SUCH INDIVIDUALS.

ALTHOUGH THE AUSTRIAN AMBASSADOR WAS REASONABLY OPTIMISTIC REGARDING THE SETTLEMENT OF THIS MATTER AS WELL AS PROGRESS IN THE FIELD OF HUMANITARIAN CASES, HE WOULD NOT VENTURE A GUESS AS TO WHEN THE CONSULAR AGREEMENT MIGHT BE SIGNED.COOPER

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